

EXPLANATION OF DRAFT OF PROPOSED BILL TO AMEND

THE NATIONAL FIREARMS ACT

The draft of the proposed bill has been prepared by the Treasury Department in cooperation with the Department of Justice to formulate strengthening amendments to the National Firearms Act for consideration as legislative proposals of the Administration in connection with the proposed special message of the President to the Congress concerning crime.

Under the draft bill, the scope of the National Firearms Act (which now covers gangster-type weapons such as machine guns, sawed-off shotguns, and deceptive weapons such as flashlight guns, fountain pen guns, etc.) would be broadened to include destructive devices such as explosive or incendiary (1) bombs, (2) grenades, (3) rockets, (4) missiles, or (5) similar weapons, as well as large caliber weapons such as mortars, anti-tank guns, bazookas, etc. This would mean that such weapons would be subject to all provisions of the Act and that persons engaging in business as importers, manufacturers, and dealers in such weapons would be required to register and pay special (occupational) tax. Also, the taxes applicable in respect of the making and transfer of weapons such as machine guns (\$200 per firearm) would be applicable with respect to the making and transfer of such destructive devices. Also, it would be unlawful for a person to possess a destructive device of this character unless such device was registered with the Secretary of the Treasury.

In addition the draft bill would contain certain additional strengthening and clarifying amendments to the National Firearms Act.

Detailed Explanation

Section 1 of the draft bill:

This section would amend section 5848 of the Internal Revenue Code of 1954 which is the section of the National Firearms Act containing the definition of the weapons subject to the Act (Chapter 53 of the Internal Revenue Code is cited as the National Firearms Act).

Paragraph (a):

Paragraph (a) of section 5848 of the Internal Revenue Code of 1954 would amend

- 2 -

paragraph (1) of section 5848 of the Internal Revenue Code of 1954 to include destructive devices within the term "firearm", as used in the National Firearms Act. The effect of this is to make the provisions of the Act applicable to a "destructive device" as that term is defined in paragraph (c) of section 1 of the draft bill. ✓

Paragraph (b):

Paragraph (b) of section 1 as contained in the draft bill would amend paragraph (2) of section 5848 of the Internal Revenue Code of 1954 (which is the definition of "machine gun" contained in the National Firearms Act) to include any weapon "which can readily be restored to shoot" automatically or semi-automatically, more than one shot, without manual reloading, by a single function of the trigger. This is merely a clarification of the law and represents the administrative construction of existing law. ✓

The definition of machine gun would be further amended to include "the frame or receiver" of a machine gun. Under the Federal Firearms Act, the frame or receiver of a firearm is included within the definition of a firearm. This change would bring the frame or receiver of a machine gun within the coverage of the National Firearms Act. ✓

The definition of machine gun is further amended to include "any combination of parts designed and intended for use in converting a weapon, other than a machine gun, into a machine gun". For example, so-called "conversion kits" are now made and sold for the purpose of converting certain rifles so that they will fire automatically or semi-automatically more than one shot, without manual reloading by a single function of the trigger (i.e., converting such rifles into machine guns). However, under existing law, there is no effective way to control the manufacture and transfer of such kits. This change is designed to correct this situation and to prevent subversion of the purposes of the Act. ✓

Paragraph (c):

Paragraph (c) of section 1 of the draft bill provides for the renumbering of paragraphs (3) through (11) as paragraphs (4) through (12), respectively, of section 5848 of the Internal Revenue Code of 1954, and for the insertion after paragraph (2) of such section of the Code of the following paragraph (3). The new paragraph (3) would insert a definition of the term "destructive device". ✓

- 3 -

The definition of the term "destructive device" contained in paragraph (3) of section 5848 of the Internal Revenue Code of 1954, as contained in the draft bill, is a new provision. It would bring under the coverage of the National Firearms Act any explosive or incendiary (a) grenade or (b) bomb or (c) rocket or (d) missile or (e) similar weapon, or launching device therefor (except devices which are not designed or re-designed or used or intended for use as a weapon), and would include all large caliber weapons such as bazookas, mortars, anti-tank guns, etc.

The parenthetical exception contained in this definition is drafted in the same manner as the exceptions contained in 26 U.S.C. section 5179(a) (relating to registration of stills) and section 5205(a)(2) (relating to stamps on containers of distilled spirits). Therefore, the decisions of the courts (Queen v. United States, 77 F.2d 780; cert. den. 295 U.S. 755; and Scherr v. United States, 305 U.S. 251) to the effect that the Government is not required to allege or prove matter contained in an exception, would be applicable. Establishment by a person that he came within the exception would be a matter of affirmative defense. Thus, an explosive device shown to be designed and intended for lawful use in construction or for other industrial purposes would be excepted. However, if the device were designed or used or intended for use as a weapon, it would be subject to the provisions of the Act.

A provision has been made in this definition that the Secretary may exclude from the definition any device which he finds is not likely to be used as a weapon. Examples of devices which may be excluded from this definition are devices such as Very pistols and other signaling devices and line-throwing appliances (required for commercial vessels by United States Coast Guard regulations) which may have been made from converted firearms. This provision also makes it possible to deal with any other comparable situation which may arise, such as old cannon or field pieces which are primarily of historical significance and with respect to which there is no reasonable likelihood that they will be used as a weapon.

Paragraph (d):

Paragraph (d) of section 1 as contained in the draft bill, would amend paragraph (4) (as renumbered) of section 5848 of the Internal Revenue Code of 1954 by striking out the period

- 4 -

at the end thereof and inserting the words ", and shall include the frame or receiver of any such weapon, and any such weapon which can readily be restored to firing condition." The effect of this change is to include the frame or receiver of a rifle within the definition of that term as used in the National Firearms Act. This change is comparable to the corresponding change in the definition of "machine gun" contained in paragraph (b) of this section. The inclusion in the definition of the language ", and any such weapon which can readily be restored to firing condition" represents a clarification of law and is consistent with the administrative construction of existing law. ✓

Paragraph (e):

Paragraph (e) of section 1, as contained in the draft bill, would amend paragraph (5) (as renumbered) of section 5848 of the Internal Revenue Code of 1954. This paragraph contains the definition of the term "shotgun" and the change is identical with the change made with respect to the definition of "rifle" referred to in paragraph (d) above. ✓

Section 2 of the draft bill:

Section 2, as contained in the draft bill, would amend section 5843 of the Internal Revenue Code of 1954 (which relates to identification of firearms) by inserting at the end thereof a new sentence. This new provision is intended to provide for the identification of a firearm (possessed by a person other than a manufacturer or importer) which does not bear the proper identification. ✓

Section 3 of the draft bill:

Section 5850 of the Internal Revenue Code of 1954, as contained in the draft bill, would add a new section to subchapter B of chapter 53 which would provide that, "Nothing in this chapter shall be construed as modifying or affecting the requirements of section 414 of the Mutual Security Act of 1954, as amended, with respect to the manufacture, exportation, and importation of arms, ammunition, and implements of war." ✓

This provision is merely for the purpose of assuring that the chapter will be so construed.

Section 4 of the draft bill:

- 5 -

Section 4 of the draft bill contains the effective date provisions of the amendments in the proposed Act.

Subsection (a):

This subsection provides that the amendments made by section 2 and section 3 of this Act shall become effective on the date of enactment, since there is no reason for delaying the effective date of these provisions. ✓

Subsection (b):

This subsection provides that the amendments made by section 1 shall become effective on the first day of the fourth month following the month in which this Act is enacted. This is the same period provided with respect to the amendments to the National Firearms Act made by Public Law 353, 82nd Congress, 2nd Session, and would provide sufficient time for the issuance of instructions, preparation of forms, and amendment of regulations. ✓

Subsection (c):

This subsection would provide that, notwithstanding the effective date provisions contained in subsection (b), registration under section 5841 of the Internal Revenue Code of 1954, which is required by reason of the amendments made by this Act, shall commence on the first day of the second month following the month in which this Act is enacted. In effect this provides a two-month grace period during which period persons who possess weapons which are required to be registered by reason of this Act may register such weapons. This provision is comparable to the provisions contained in Public Law 353 referred to in paragraph (b) above.

Subsection (d):

This effective date provision corresponds to a similar provision in Public Law 353, and would avoid the imposition of any criminal or other liability in respect of any act or failure to act, as required by the new amendment, occurring before the effective date specified in subsection (b), even though registration will commence at an earlier date in accordance with subsection (c).